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MEMORANDUM FOR: Mr. Walter Pforzheimer

FROM : [Redacted] Room 826 C of C

SUBJECT : Historical Antecedents of Certain Provisions
of the National Security Act of 1947

Herewith, in response to your request, is a brief account of the historical antecedents of four provisions of the National Security Act of 1947 relative to the functions and duties of the Central Intelligence Agency.

These provisions, which are taken up below in the order of their occurrence in the Act, pertain to the denial of police powers, "sources and methods," "services of common concern," and "perform such other functions" as directed.

Because of your own intimate familiarity with the Act itself, I will not burden you with any antecedents beyond Truman's letter establishing the NSA and the CIG, in January, 1946.

I. Denial of Police Powers

"...the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions..."(NSA 1947, Sec. 102., (d) (3).)

A. Prewar Background: Donovan: This denial has an interesting and long pedigree which begins with Colonel Donovan. In a letter to Secretary of the Navy Knox, April 26, 1941--three months before the establishment of CIG, and eight months before Pearl Harbor, Donovan outlined, at Knox's request, the basic principles underlying the establishment of a foreign intelligence organization. One of these was that such an agency

- (1) "should not take over the home duties now performed by the F.B.I., nor the intelligence organizations of the Army and the Navy. Its functions would be: (1) to have sole charge of intelligence work abroad,..."

Three months later, June 10, 1941, in his memorandum to FDR on the "establishment of Service of Strategic Information," Donovan wrote that his proposed service

- (2) "will neither displace nor encroach upon the FBI, Army and Navy Intelligence or any other department of the government."

B. Establishment of Coordinator of Information, July 11, 1941: The order designating Donovan as Coordinator specifically assured the Army and Navy that "nothing in the duties and responsibilities" of the COI would in any way interfere with or impair their duties and responsibilities, but the order made no reference to police powers. The former was included by the order's drafters--FDR's advisor Ben Cohen and Budget Bureau experts--because the military, especially, General Marshall, had been greatly exercised by the prospect of Donovan's apparent imminent appearance as a chief of "strategic" information. The latter, police power exclusion, had quite clearly not occurred to anyone as in order.

Nevertheless, as Secretary Knox, good friend and patron of Donovan's, informed FDR: many departments, including Justice, had "their hackles up over the danger that somebody is going to take something away from them." By way of reassurance, the White House, when announcing Donovan's appointment on July 11, explained that

- (1) "Mr. Donovan's task will be to coordinate and correlate defense information, but his work is not intended to supersede or to duplicate, or to involve any direction of or interference with the activities of the General Staff, the regular intelligence services, the Federal Bureau of Investigation or other existing departments and agencies."

Additionally, FDR dispatched to the executive departments on July 14, 1941, this assurance:

- (2) "I should like to emphasize that Colonel Donovan's work is not intended to supersede or duplicate or involve any direction of the activities of established agencies already obtaining and interpreting defense information. As Coordinator, Colonel Donovan is authorized to obtain such defense information from the various departments and agencies and from other sources as may be necessary in the performance of his duties."

C. Donovan-Hoover Brouhaha,: In the weeks right after Pearl Harbor Donovan and J. Edgar Hoover were at swords' points over issues too many and complex to elucidate briefly here. Suffice it to say that Hoover suspected Donovan of pretensions to operational and/or liaison functions in the U.S., South America, and the entire Western Hemisphere; for his part Donovan insisted that Hoover and others misconceived the purpose, scope, and character of foreign intelligence work, and particularly of his responsibilities as "Coordinator of Information." Donovan was provoked to write such as the following on the difference between an intelligence and a security organization:

- (1) "...the F.B.I. was a security organization. Its functions were largely those of police, relating to espionage, sabotage and subversive activities generally. The personnel of any organization dealing with security must necessarily differ in mentality, training, aims and methods from those of an intelligence organization. Any attempt to merge security and intelligence must inevitably lead to confusion." (In draft only, January, 1942.)

Donovan, who had been an assistant attorney general in the Justice Department, asserted throughout the war his agency's fundamental and determining disinterest in domestic policy and law enforcement activities. Thus, on May 1, 1943, he told a large group of military officers:

- (2) "We, of course, have nothing to do with what is happening in America. We are dealing abroad."

Just as Hoover had his suspicions of Donovan, so also the latter had his own of Hoover. As early as mid-1943 and certainly by the end of 1944 OSS observed with both anger and resentment what it considered as FBI expansion into the foreign field. Thus in one instance Donovan was reminded that

- (5) "you indicated...that you would have no objection provided the work to be undertaken by these FBI men was to be within the proper sphere of FBI activities in Europe and you expressed the opinion that the Department of Justice should set this forth in writing and not merely orally to Mr. [Ambassador] Caffery." (May 3, 1945)

Later he was additionally reminded that

- (4) "you did not wish to oppose the appointment of FBI representatives to the staff of the American Embassy in Paris, although you felt very definitely that such representatives should perform only duties consistent with the law enforcement functions of their organization." (May 16, 1945)

D. Earliest Drafts of Denial: As Donovan led the way in drafting plans for a postwar permanent central intelligence organization, so also he provided the first specific provisions denying such an organization any domestic police powers. Thus in October 1944 among the principles enunciated in his "The Basis for a Permanent, United States Foreign Intelligence Service" were:

- (1) "That such a Service should not operate clandestine intelligence within the United States."
- (2) "That it should have no police function and should not be identified with any law-enforcing agency, either at home or abroad."

On a plan drawn up by his New York OSS office a few weeks later, Donovan spotted the common agreement that the FBI, G-2, and ONI could not do the type of work OSS had in mind, and he scribbled on the text:

- (3) "Right. Given them charge of their own operational intelligence."

Donovan's November 18, 1944 plan--famous, provocative, and ultimately successful--included the provision that

- (4) "The _____ shall have no police or law-enforcement functions, either at home or abroad."

In some "Interpretative Notes" on this plan, written by Donovan's deputy, Brig. Gen. John Magruder, and read by Donovan, there occurs recognition of

- (5) "...two distinct functions: that of a security police system at home dependent upon coercion and law enforcement as its weapon and an agency wholly without coercion or police duties whose function is intelligence alone, which intelligence is made available to such appropriate law enforcing authorities as may exist, either civil or military. The counter-espionage and other clandestine activities of the central agency are of the latter type."

Donovan's view was given, once again, on August 8, 1945, in a letter to Sen. Harley Kilgore:

- (6) "This does not mean the establishment of a Gestapo. Quite the contrary. Such a service should have no powers of arrest either at home or abroad. It should have no authority to exercise surveillance at home. It should deal only with intelligence in foreign affairs."

E. Incorporation of denial in JCS Plan: This is not the place to review the great struggle over the Donovan plan and the development of a counter-proposal by the military. Suffice it to note that that proposal included the denial of police powers; the document, JCS 1181/5, September 19, 1945, declared

- (1) "The Central Intelligence Agency shall have no police or law enforcement functions."

When he drafted his November, 1944, plan for a postwar organization, Donovan included a provision requiring other departments to provide "such intelligence material" as the director of the proposed agency, with the approval of the President, might request. Under pressure from Donovan on the whole idea of a postwar organization, the military finally produced a draft (JIC 239/5, January 1, 1945) which provided that

- (1) "Such departmental operating intelligence as designated by the National Intelligence Authority [the Secretaries of State, War, and Navy, and a JCS representative] shall be freely available to the Central Intelligence Agency for synthesis."

B. Fashioning a Text: The military, especially the Navy, remained unhappy, however, with this concession; they feared for, e.g., the security of signal intelligence. Hence on January 8, 1945, the Director of Naval Communications proposed adding to the above text the following:

- (1) "except that intelligence need not be furnished or made available to the Central Intelligence Agency if, in the opinion of the head of any department or agency, the disclosure will be inimical to the functions of any such department or agency."

When the JIC document was reviewed at the next JCS echelon, that of the Joint Strategic Survey Committee (JSSC) the original wording was retained but supplemented by:

- (2) "In the interpretation of this paragraph, the National Intelligence Authority and the Central Intelligence Agency will be responsible for fully protecting intelligence sources and methods which, due to their nature, have a direct and highly important bearing on military operations."

Aside from stylistic changes, no change but one was subsequently made in this particular provision as the plan went through many additional hands. That one change saw the dropping of the last clause regarding the bearing on military operations. The excision was made by Clifford, the White House draftsman-adviser. Hence Truman's January 1946 letter simply stated that

- (3) "In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods."

III. Services of Common Concern

- (4) "...to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;..." (NSA 1947, Sec. 102, (d) (4))

A. Background: Haphazard wartime expansion and proliferation of intelligence agencies and functions had produced, inter alia, considerable obvious duplication. Recognition of the problem led to the development, in the military, of many "joint" agencies and activities such as "Joint Prisoner of War Interrogation" and "Captured Enemy Equipment." Such solutions were, at best, only partial and too often left civilian agencies out of consideration.

B. Earliest Elaboration of Concept: The earliest exposition of the idea of "common concern" appeared in July 1943 in "Observations on U.S. Intelligence Services," which was written by the OSS official, General Magruder. For some time he had been greatly concerned with the overall--not just the military--problem of intelligence; and in this 1943 paper he treated in broad fashion of the structure, duplication, and general ineffectiveness of a "system" of many uncoordinated agencies working on many related problems. Thus he wrote:

- (1) "It is a service, or an agglomeration of services, which has been allowed to develop without national plan. The intelligence services of the general national bureaus are operating with ill-defined directives and functions. Each is attempting to perform a number of intelligence functions common to the others and often inappropriate to the particular bureau. Existing directives...are imprecise, sometimes contradictory, and permit broad over-lapping fields of action."

C. Appearance of the Term: "Common concern" first appears in General Magruder's August 11, 1944, "Organization of an Intelligence System." His projected "Central Intelligence Service," he wrote,

- (1) "should be responsible for this intelligence activities of common concern to all the armed services and, in some instances, of common national interest, such as:
 - (a) The assembly, research, analysis and distribution of information affecting strategy in the following fields: political, economic,...
 - (b) The final analysis ...of all joint intelligence surveys...
 - (c) The exclusive operation of: Espionage and counter-espionage abroad, cryptographic analysis (policy and control); security control and deception.
 - (d) The training of key intelligence personnel..."

The term next appears in a paper written December 9, 1944, by Col. Ludwell L. Montague, when the military had to provide a response to the proposal made by Donovan in November regarding a permanent agency. His draft provided that the secretaries of State, War, and Navy

- (2) "shall also establish, separately from the Federal Intelligence Directorate, a Joint Intelligence Service, constituted as they may direct, for the performance of such intelligence operations of common concern as they may assign to it."

D. Further Development of the Provision: G-2 was especially fearful that a new agency would usurp some of its functions, might even absorb it completely; hence they wanted some assurance the new agency served departmental interests. At the same time there was an effort to provide for espionage without admitting the fact. These two considerations produced the following text, which appeared in the important JIC 239/5, January 1, 1945:

- (1) "Perform, for the benefit of departmental intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished by a common agency, including the direct procurement of intelligence."

This text remained substantially unchanged through many subsequent studies of the plan until it was readied for President Truman's approval when apparently reluctance to make even an oblique reference to espionage brought on the elimination of the last six words. Hence in the NIA directive the provision reads:

- (2) "Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally."

IV. Perform Such Other Functions

- (3) "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."
(NSA 1947, Sec. 102, (d). (5).)

A. Background: The only known antecedent for this catchall is that in FDR's 1941 order establishing Donovan as Coordinator of Information:

- (1) "...and to carry out, when requested by the President, such supplementary activities as may facilitate the securing of information important for national security not now available to the government."

This provision was clearly intended to cover the clandestine use of radio in the collection of information in Nazi-occupied lands and the subsequent conduct of a radio propaganda counteroffensive. It is not so clear as to what was intended by the provision when, quite differently phrased, it appeared in Donovan's 1944 plan; the proposed agency would perform:

- (2) "Such other functions and duties relating to intelligence as the President from time to time may direct."

Donovan had already provided for espionage, ~~counterespionage~~, and subversive operations abroad, as well as several overt functions, and hence this provision could well have been intended to cover unforeseeable contingencies.

B. Final Formulation: The provision was taken up by the military in their plan, and persisted with only the most minor changes throughout later revisions of the basic plan. Thus Truman's directive in January 1946 reads:

- (1) "Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct."

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